

BOARD OF ARCHITECTURAL EXAMINERS

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REPORT TO THE CALIFORNIA LEGISLATURE

**Board Overview, Issues, Findings
and Recommendations**

**Prepared by:
Joint Legislative Sunset Review Committee**

APRIL 1997

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

Senator Leroy Greene
Chairman

Senate Members

Senator Maurice Johannessen
Senator Richard Polanco

Assembly Members

Assemblymember Susan Davis (VC)
Assemblymember Elaine Alquist
Assemblymember Bill Campbell

Staff

Bill Gage
Consultant

Staff Assistance Provided By:

Jay DeFuria
Consultant
Senate Business and Professions Committee

G.V. Ayers
Consultant
Senate Business and Professions Committee

Michael Abbott
Consultant
Senate Business and Professions Committee

Sailaja Cherukuri
Analyst
Legislative Analyst Office

TABLE OF CONTENTS

1. Overview of the Current Regulatory Program	1
2. Issues and Final Recommendations	6

1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BOARD

The California Board of Architectural Examiners was created by the California Legislature in 1901. There were over 250 architects, at the time, who were certified as architects and did not have to take the examination.

Almost 1,950 were licensed by the Board after taking a written or oral examination.

The original Architect's law was considered as a title act rather than a true practice act. The law made a significant exemption for licensure of those individuals who prepared plans, specifications, instruments of service, or other data for buildings, if they informed the client in writing that he or she was not an architect. In 1963, the law was revised making the actual practice by an unlicensed individual a misdemeanor. California has a practice act and title act. The practice of architecture is now defined under Section 5500.1 of the Business and Professions Code. Title protection is provided under Section 5536.

From 1964 through 1985, the Board also regulated "registered building designers." After 1985, the registration category was eliminated. Of the estimated 700 active building designers registered at the time, about 300 applied for and were granted licenses as architects.

The Board is presently composed of ten (10) members of which five (5) are public members and five (5) are architects. The five architects are all appointed by the Governor. Three public members are also Governor's appointments, while one public member is appointed by the Assembly Speaker and the other appointed by the Senate Rules Committee.

As of August 1, 1996, there were 24,208 licensed architects in California.

About 80% are occupied in private practice, 2% in education, 6% in government, 4% are in industrial practice, and 8% in other fields. The following provides licensing data for the past four years:

LICENSING DATA	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
Licensees	Total: 22,402	Total: 23,030	Total: 23,585	Total: 23,991
Applications Received	878	755	656	545
Applications Denied	1	2	2	4
Licenses Issued	875	755	656	543
Renewals Received	8,745	11,488	9,189	11,704
Statement of Issues Filed	1	0	1	0
Licenses Denied	1	1	2	4

BUDGET AND STAFF

The main sources of revenue for the Board are generated from candidates taking the written and oral examination and for the issuance and renewal of licenses. The fees collected from

candidates taking the examination support the examination program, and fees for licensure and renewal of licenses support the license, enforcement, and administration programs.

The Board's projected expenditures for fiscal year 1996/97 is about \$2.8 million. Anticipated revenues are about \$1.9 million in 1996/97 and \$2.8 million in 1997/98. (The difference of about \$1 million is due to increased revenue on biennial renewal of licenses.) The Board anticipates that it will decrease budget expenditures by approximately \$900,000 by privatizing its written examination. The Board's current reserve is about \$2 million. As of June 30, 1997, the Board expects a reserve of about \$1.2 million, or about 5.2 months in reserve). The Board does not expect an increase in fees in the next two fiscal years.

For fiscal year 1996/97, the Board expects to spend \$1.3 million on the administration of its examinations, or 44% of its total budget. Approximately 8 staff are assigned to the examination and licensing program. The Board expects to spend only \$1 million on its enforcement program, or 37% of its total budget. (There are 5 staff assigned to the enforcement program.) Other boards spend on average about 7% of their budget on examinations and 66% on enforcement.

The Board has 26.9 staff and 32.7 authorized positions for 1995/96.

FEES

The Board's license is good for two years. The Board's current fee structure is as follows:

Fee Schedule	Current Fee	Statutory Limit
Application Fee	\$100	\$100
Exam Fee for Any Section Tested	\$100	\$100
Original License Fee	\$200	\$200
Renewal Fee	\$200	\$200
Retired License Fee	\$200	\$200

LICENSING REQUIREMENTS

To become licensed as an architect in California, a candidate must successfully complete a written and oral examination, as well as provide evidence of at least eight years of education and/or experience. All of the states and U.S. jurisdictions have licensing requirements similar to those in California, although California provides more alternative education and experience paths to licensure than other jurisdictions.

- The Board administers a national written examination, titled the “Architect Registration Examination” (ARE), which was developed by the National Council of Architectural Registration Boards. The ARE is a nine-section exam which, beginning in February, will now be administered by computer. To be eligible to take the ARE, a candidate must have a minimum of five years of Board-approved education and/or work experience. [Other states require eight years.] About 4,000 California candidates take the exam annually. The overall California pass rate from 1992 to 1996 was 45%. There is only about a 4% variation in pass rate from one year to the next.
- California has its own oral exam that all candidates who have successfully completed the written exam or who are qualified licensees from other states must take and pass prior to licensure. The oral exam is a one-hour exam and about 1,200 candidates take the test annually. The overall pass rate from 1992 to 1996 was 56%. There is only about a 2-3% variation in pass rate from one year to the next.
- The Board requires that a candidate for licensure have the equivalent of at least five years of education and three years of work experience. At least one year of work experience must be under the direct supervision of a licensed architect. The Board, unlike other states, allows candidates to follow many different routes to earn the five years of educational equivalents and three years of work experience. This could include receiving a degree in architecture from a nonaccredited degree program, or a degree from a technical school in a field related to architecture. Credit for work experience may also be obtained by working under the direct supervision of an engineer or contractor, rather than a licensed architect. [Other states require candidates to have completed a three year “Intern Development Program” (IDP) to meet the experience requirement. The IDP is administered by the National Council of Architectural Registration Boards.]

CONTINUING EDUCATION/COMPETENCY REQUIREMENTS

There is no requirement that architects participate in continuing education as a condition for license renewal. The Board has historically opposed mandatory continuing education as a condition for licensure. The Board does not feel that the government requiring continuing education is effective, cost-efficient, or beneficial to the public. However, the Board recommends that all licensees avail themselves of opportunities to enhance their professional skills and notes that the American Institute of Architects requires its membership to participate in continuing education as a condition of membership.

The Board may require as a condition of probation remedial education for those architects found to be guilty of incompetence or negligence. The Board does not, however, have a program to assure the continuing competency of licensed architects.

ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
Inquiries	Total: 4,132	Total: 4,448	Total: 24,944	Total: 16,909
Complaints Received (By Source)	Total: 166	Total: 241	Total: 269	Total: 299
Public	84	57	114	
Licensees	28	68	52	
Other	54	116	103	
Complaints Filed (By Type)	Total: 166	Total: 241	Total: 269	Total: 299
Unlicensed Activity	73	162	150	187
Non-Jurisdictional	26	13	13	4
Contractual	3	2	28	12
Fraud	1	1	8	11
Competence/Negligence	4	5	15	10
Unprofessional Conduct	0	1	12	41
Other	59	57	43	34
Compliance Actions	Total: 48	Total: 118	Total: 104	Total: 152
Citations Only	0	0	1	4
Citations with Fine	3	4	1	4
Reprimand/Cease and Desist	37	114	102	103
Warning Notice	7	0	0	36
Violation Letter	1	0	0	5
Investigations Opened	Total: 23	Total: 14	Total: 15	Total: 44
Disciplinary Actions	Total: 1	Total: 2	Total: 2	Total: 2
Accusations Filed	2	3	1	2
Accusations Withdrawn	0	1	1	0
Stipulated Judgments	1	2	2	1
Surrender of License	0	0	0	0
Probation	0	0	0	1
License Suspension	0	0	0	0
License Revocation	0	0	0	0
Criminal Actions Referred	3	5	10	4

COMPLAINT DISCLOSURE POLICY

The Board will provide the public with information regarding the number of pending complaints which are currently being investigated against the licensee, or the number referred to the Attorney General's Office. It will not disclose the nature of the complaint until it is considered as a closed "actionable" complaint, which is defined as a complaint which has been investigated, determined that a violation has occurred, and disciplinary action taken (i.e., citation, fine, accusation, statement of issues, stipulated settlement).

COST RECOVERY AND RESTITUTION TO CONSUMERS

COST RECOVERY	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
Requested	0	\$7,504	\$2,156	\$4,605
Received	\$971	\$600	\$588	\$2,224

The Board has no policy or program regarding restitution to consumers.

CONSUMER OUTREACH AND EDUCATION

Consumers who call in with inquiries or complaints are provided copies of the *Architects Practice Act*, the Board's *Complaint Form* and *Complaint Information Sheet*, and a copy of the *Consumer's Guide to Hiring an Architect*.

In 1985, the Board initiated what is called the "Building Official Contact Program," to ensure building officials' awareness of and compliance with state statutes mandated by the Architects Practice Act. This contact program is implemented through scheduled seminars, personal contact between local officials and the Board staff, department training programs, and dissemination of the Board's *Building Official Information Guide*. Results from a 1996 survey of participants in this program, indicated that 98% of local officials believe this program has helped them carry out their duties and 96% said they had received satisfactory service from the Board staff.

2.

IDENTIFIED ISSUES AND FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

ISSUE #1. Should the licensing of architects be continued?

Recommendation: *The State of California should continue the regulation and licensing of the practice of architecture.*

Comment: The licensed architect is responsible for designing structures that are structurally sound and meet fire and life safety standards. There is a substantial risk of harm, both physical injury and/or death, which could result due to improperly designed structures. Although the Architecture law was originally a title act, the practice of architecture has changed substantially, as well as the risks involved from incompetent or negligent practice. The current licensing/practice law is necessary to adequately protect the consumer of services rendered by architects and the public at large. Every state and U.S. jurisdiction has adopted legislation regulating the practice of architecture. There are only two states which have title acts.

ISSUE #2. Should the Board of Architectural Examiners be continued as an independent board, merged with another board, or should its operation and functions be assumed by the Department of Consumer Affairs?

Recommendation: *The Board of Architectural Examiners should continue to be the agency responsible for the regulation of the practice of architectural design. Legislation should be enacted to continue the Board and require a subsequent sunset review in six years.*

Comment: In several states, 14 to be exact, architects have been merged with the engineers into a single board; and in 12 states, architects, engineers and land surveyors have been merged into a single board. It has been argued that these professions are so similar to each other, that maintaining separate boards is unnecessary. However, although merger may create some operational efficiencies, there is no indication that merger with other boards has had any overall effect on improving the board's licensing and enforcement programs. Nor does it appear that there would be any demonstrable change in the Board's effectiveness and efficiency if it was eliminated and its regulatory responsibility was centralized under the Department of Consumer Affairs.

ISSUE #3. Should the composition of the Board be changed?

Recommendation:

Change the composition of the 10-member board to a public majority by reducing by one (1) the number of architects serving on the board. This would change it to a 9-member board, with 5 public and 4 professional members.

Comment: The board currently has an even number of public members (5) and architects (5). All other trade-type boards, except for the Board of Accountancy and health-related boards, have a majority of public members. Most Boards also have an odd number of members.

ISSUE #4. Should the Oral Examination provided by the Board be eliminated?

Recommendation:

A state examination is necessary to test for knowledge, skills, and abilities that are unique to California. However, the Department should review this exam to assure that it does not duplicate what is already tested for on the National examination, and whether a written exam would be more appropriate for testing of competence in this occupation and if it would be less costly.

Comment: The Board administers two examinations -- a national written examination and a state-specific oral examination. The national exam may be taken after 5 years of education/work experience, the oral exam can only be taken after 7 years and six months of education/work experience and passage of the national exam. The average passage rate for the national exam from 1992 to 1996 was 45%. On average, about 56% of those who took the national exam passed the oral exam. (This average goes higher for repeat test takers.)

The Board is one of only three boards in DCA (Board of Behavioral Science Examiners and Board of Podiatry are the others) that requires an oral examination. Use of an oral examination is rarely used by boards because of the criticism that it may lead to arbitrary judgments, and that it is not always the most objective and consistent way to test for the competence of the professional in a particular occupation.

The oral examination is almost 33 percent more expensive to administer than the national written examination. The oral examination is costly due to the expenses associated with the travel and per diem of the 400 architect consultants who serve as examiners on the Board's three-member examination panels. In addition to the high cost, it is not clear that an oral examination is still needed. The Board argues that the oral exam tests for those "integrative aspects" of practice not tested in the national exam, for those aspects of practice unique to California (seismic design, legal issues, etc.), and for those knowledge, skills, and abilities one attains through work experience. However, from a review of the scope of this exam, some areas of the oral exam appear duplicative of the national exam. (For example, both cover the areas of schematic design and design development.) Other boards provide a written exam for those aspects of the practice which are considered unique to California, especially seismic design principles, building codes, and other related laws.

ISSUE #5. How should savings in costs from the privatization and the computerization of the National written exam be redirected?

Recommendation: *The Board should report to the respective Budget Committees by Fiscal Year 1998/99, on anticipated savings, and provide a plan for redirecting those funds for the next two fiscal years. Consideration should be given to maintaining a prudent reserve in future years (at least 3-months), and increasing enforcement activity.*

Comment: The Board has initiated action to privatize the national written examination (ARE). Beginning in February 1997, the ARE will be administered exclusively on computer. At that time, the paper-and-pencil format will no longer be available. The exam administration will have numerous benefits for candidates and will streamline Board operations. The Board anticipates decreasing budget expenditures by almost \$900,000, or by 25% of the Board's total expenditure authority. After considering revenue reductions, the Board expects a net savings of \$144,000 for 1996/97.

ISSUE #6. Should the limited immunity granted to architects, for providing emergency inspection services after an earthquake, be expanded to all declared disasters as recommended by the Board?

Recommendation: *The limited immunity provision should include other*

declared emergencies, such as fires, riots, and floods.

Comment: Section 5536.27 provides for limited immunity for services rendered by the architect at the scene of a declared emergency caused by an earthquake. The Board is recommending that this immunity be expanded to include all natural disasters.

ISSUE #7. Should the cite and fine procedures used by the Board be changed to provide a more simplified process?

Recommendation: *Sections 5566-5566.2 of the Business and Professions Code should be eliminated from the Architect's Practice Act, and the Board should be required to adopt regulations pursuant to Section 125.9 and Section 148 of the Business and Professions Code. This would provide a more simplified process.*

Comment: Most boards are governed by Section 125.9 and Section 148 of the B&P Code when establishing a citation and fine program. Both of these sections outline a simpler process which may be enacted through adoption of regulations by the board. Sections 5566-5566.2 were adopted prior to enactment of these two sections, and requires a rather lengthy and cumbersome process to issue citations and fines to a licensee or unlicensed individual who violates the Act. The Board is recommending to “simplify and update” these statutes so they could use cite and fine as a more effective enforcement tool. A better alternative would be to eliminate these sections entirely and allow the Board to adopt regulations pursuant to Sections 125.9 and 148 of the B&P Code.